IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 770 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LEGAL HEIRS & REP. OF MOHANBHAI KHIMABHAI

Versus

UJIBEN MEGHAJIBHAI VACHHANI

Appearance:

1. Civil Revision Application No. 770 of 2001

MR ANSHIN H DESAI for Petitioner No. 1-1/2

MR KM PARIKH for Respondent No. 1-3

MR RM CHAUHAN, AGP for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioner No.1 herein is the original plaintiff and the petitioner No.2 is the original

defendant No.6 of Regular Civil Suit No.410/2000. In the said suit, the petitioner No.1 preferred an application for interim injunction and the trial Court granted said application, against which respondent No.1 to 3 preferred an appeal. However, there was a delay in filing such appeal, therefore, a separate application for condonation of delay was preferred. The appellate Court while hearing the said application for condonation of delay, ex-parte, stayed the order of the trial Court till further orders. It is the said order, which is impugned in this revision at the instance of the original plaintiff No.1 as well original defendant No.6.

2) It is argued by Mr.Desai for the petitioners that without deciding Civil Misc.Application No.80/2001, which is for condonation of delay, the appellate Court should not have stayed the entire order of the trial Court, as it amounts to allowing the appeal.

3) On the other hand, Mr.Parikh, on instruction from his client, states that he has no objection if the order of the appellate Court granting stay of the order of the trial Court is set aside. However, he has requested that the appellate Court may be directed to decide Civil Misc.Application No.80/2001 immediately. Mr.Chauhan, learned AGP, who is appearing for respondent No.4 and 5 states that he has no objection if appropriate order is passed, as he is not appearing on behalf of the main contesting respondent.

4) Considering the concession given by the learned advocate for the respondents No.1, 2 and 3, following order is passed :

The order of the appellate Court, by which the order of the trial Court is stayed, is set aside and the stay is vacated. However, in the facts and circumstances of the case, Civil Misc.Application No.80/2001, which is pending before the appellate Court, is ordered to be decided latest by 3rd May, 2004. The appellate Court may decide said Civil Misc.Application on its own merits and without being influenced by the present order. Mr.Desai has assured this Court that his client will cooperate for early hearing of the matter and will not ask for adjournment.

5) Office is directed to sent writ of this order to the appellate Court latest by 15th April, 2004.

6) Accordingly, this Civil Revision Application is allowed. Rule is made absolute with no order as to

costs.

(P.B.Majmudar,J.)

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